

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF TENNESSEE  
3                   AT KNOXVILLE, TENNESSEE

3                   \_\_\_\_\_)  
4                   SNMP RESEARCH, INC. and SNMP                   )  
5                   RESEARCH INTERNATIONAL, INC.,                   )  
6                   Plaintiffs,                   )  
7                   vs.                   ) Case No. 3:20-cv-451  
8                   EXTREME NETWORKS, INC.,                   )  
9                   Defendant.                   )  
10                  \_\_\_\_\_)

10                   MOTION HEARING  
11                   BEFORE THE HONORABLE DEBRA C. POPLIN

11                   Thursday, February 11, 2024  
12                   10:33 a.m. to 12:30 p.m.

12                   APPEARANCES:

13                   ON BEHALF OF THE PLAINTIFF:

14                   JOHN L. WOOD, ESQ.  
15                   EGERTON, MC AFEE, ARMISTEAD & DAVIS, PC  
16                   P.O. Box 2047  
17                   Knoxville, TN 37901-2047

18  
19  
20  
21  
22                   REPORTED BY:

23                   Teresa S. Grandchamp, RMR, CRR  
24                   P.O. Box 1362  
25                   Knoxville, Tennessee 37901  
                  (865) 244-0454

**APPEARANCES:** (Continued)

**ON BEHALF OF THE DEFENDANT:**

SAURABH PRABHAKAR, ESQ.  
DEBEVOISE & PLIMPTON, LLP  
650 California Street  
San Francisco, CA 94108

and

CHARLES B. LEE, ESQ.  
MILLER & MARTIN, PLLC (Chattanooga)  
832 Georgia Avenue  
1200 Volunteer Building  
Chattanooga, TN 37402

\* \* \* \* \*

1 THE COURTROOM DEPUTY: All rise.

2 This court is again in session with the  
3 Honorable Debra C. Poplin, United States Magistrate  
4 Judge, presiding.

5 Please come to order and be seated.

6 We are here for a scheduled motion hearing in  
7 Case No. 3:20-cv-451, SNMP Research, Inc. versus Extreme  
8 Networks, Inc.

9 Here on behalf of the plaintiff is John Wood.

10 Is the plaintiff ready to proceed?

11 MR. WOOD: Yes.

12 THE COURTROOM DEPUTY: Here on behalf of the  
13 defendant are Saurabh Prabhakar and Charles Lee.

14 Is the defendant ready to proceed?

15 MR. PRABHAKAR: Yes.

16 THE COURT: All right. Good morning to you  
17 all.

18 So, it appears that we have several disputes  
19 for plaintiff, as well as for the defendants. So I'm  
20 just going to go in that order, and we will address the  
21 plaintiffs' discovery disputes first.

22 So, let me start, Mr. Wood, with the first one.  
23 It appears the parties resolved discovery dispute number  
24 one. I just wanted a confirmation.

25 MR. WOOD: Your Honor, so, Extreme has produced

1 some source code. We don't -- from our examination, we  
2 don't believe they've produced all the new source code,  
3 and this was -- primarily Extreme is now contending that  
4 they removed SNMP Research software from the source  
5 code.

6 So, it appears they have produced one version,  
7 I guess. So we can verify that. Our expert has now  
8 looked at it. We've filed a report last week. He's  
9 shown that our source code is still in those products,  
10:34AM 10 and, so, we're going to need to see all the versions of  
11 the source code because it's still being used in their  
12 products.

13 THE COURT: Okay.

14 MR. WOOD: So, I guess I would say it's  
15 partially resolved.

16 THE COURT: Okay. So, have you had discussions  
17 since your expert has looked at that with Extreme as to  
18 what additional information --

19 MR. WOOD: We have not --

10:34AM 20 THE COURT: -- you are seeking?

21 MR. WOOD: We have not yet.

22 THE COURT: Mr. Prabhakar, what would be your  
23 response to that, I mean, hearing that they may need  
24 some additional information since receiving the updated  
25 information?

1 MR. PRABHAKAR: So, Your Honor, I have to admit  
2 two things: One, you know, we've produced source code  
3 long ago, so this is the first time I've heard that  
4 something may be missing or they need something else.

5 But, as a matter of principle, I don't  
6 understand what different versions are they talking  
7 about because the products are different from the  
8 software. There are many products, but there is one or  
9 two flavors of software.

10:35AM 10 So if it's about versions of software, whatever  
11 they need, I mean, we produced thousands, and we'll  
12 produce whatever else there is. I don't think there is  
13 a whole lot, so it should be easy enough to produce  
14 that.

15 THE COURT: Okay. So it sounds like it would  
16 be most efficient for you all to have a discussion,  
17 hopefully immediately after this hearing, and clarify  
18 what needs further information produced. So, I think  
19 that -- I don't think I will be able to resolve that  
10:35AM 20 until you all have a discussion. Hopefully you won't  
21 reach an impasse. So, if you can, after the hearing,  
22 just follow-up on that and see if you can get that one  
23 resolved; okay?

24 MR. WOOD: Yes, Your Honor.

25 MR. PRABHAKAR: We're ready, hopefully, Your

1 Honor. This is not one we'll have to bother you with.

2 THE COURT: Okay. Thank you.

3 All right. The next dispute is the reopening  
4 of Extreme's 30(b)(6) witness on the financial  
5 documents.

6 So, I've read the position statements, and I  
7 guess I'll turn to you, Mr. Wood. You're saying there  
8 are new columns, there is new information you want an  
9 explanation on, it may take an hour. But I do want you  
10:36AM 10 to respond to defendant's position, which is that there  
11 are two columns; one is not even populated and the other  
12 appears to be a customer purchase order number, if  
13 that's what it means.

14 MR. WOOD: Yes, Your Honor. I guess our  
15 position is: We'd like to ask the witness about that.  
16 So, for -- what we thought we were going to get was just  
17 an update to the existing document. They produced a new  
18 document with a couple of new columns. Since all of our  
19 damages are based on those documents, we wanted to  
10:37AM 20 confirm them again.

21 THE COURT: Let me ask you this: Are all the  
22 other columns, except for these two, substantively the  
23 same?

24 MR. WOOD: Yes.

25 THE COURT: Okay. So it's just these two

1 columns?

2 MR. WOOD: Right. That's my understanding.

3 THE COURT: And do you agree that one is not  
4 populated?

5 MR. WOOD: I am not -- I have not personally  
6 verified that.

7 THE COURT: Okay.

8 MR. WOOD: If they say it's not populated, then  
9 it's not. We would still like to know, well, why did  
10 they include an unpopulated column.

10:37AM

11 THE COURT: Okay.

12 MR. WOOD: What was the -- what was the  
13 purpose? Should it be populated; is there information  
14 there?

15 There may be an easy solution to this. So,  
16 they have -- as a result of our last hearing, they have  
17 agreed to put up a witness on Topic 18, which is a  
18 financial topic, Anthony Hutchins, and he actually  
19 helped prepare -- he worked on a lot of these  
20 spreadsheets, and I think if Extreme is willing, then it  
21 seems like it would be -- we could just question him.

10:38AM

22 THE COURT: And what was his name again?

23 MR. WOOD: Anthony Hutchins. And right now he  
24 is scheduled, I believe -- they have agreed to put him  
25 up for May 7th. We've asked to move that earlier, but

1 they have agreed to put up a witness for financial  
2 topics.

3 And Mr. Hutchins works with Kaylee Freeman who  
4 was the original witness. So we would be fine if we  
5 could just ask him a few of these questions. We're  
6 going to have to show him the spreadsheets anyway, so it  
7 just seems like this probably -- now that they have  
8 agreed to put up a new witness, probably should be a  
9 nonissue.

10:38AM 10 THE COURT: Okay. Mr. Prabhakar.

11 MR. PRABHAKAR: So, Your Honor, two very quick  
12 responses. If the concern is that these two new columns  
13 which don't seem to contain any relevant information  
14 have been added to the documents and the concern is that  
15 that's somehow affecting the expert reports, which we  
16 don't understand why they should, one option is that we  
17 can produce these documents again without the two  
18 columns if that fixes the concern with somehow that we  
19 intend to use these two columns to dispute the expert  
10:39AM 20 reports. That's one option, if that helps.

21 The second thing -- I think it's totally  
22 fine -- I mean, we would have obviously no objection if  
23 they wanted to put these documents in front of  
24 Mr. Hutchins. I think the only concern is that they're  
25 asking for an additional hour. I think depositions in

1 this case, particularly 30(b)(6) depositions, we reached  
2 an agreement on what the time limit is, but now we have  
3 multiple requests to add additional hours.

4 So, if it's only two columns and if they really  
5 just want information about those two columns, if within  
6 the time that they already have with the remaining  
7 witnesses they want to ask, we have -- obviously  
8 we'll -- we'll have the witness prepared to talk about  
9 why the two additional columns are there, and it's most  
10:40AM 10 likely going to be that some reporting software got  
11 updated and they got added.

12 THE COURT: Okay. Thank you.

13 So, Mr. Wood, do you think it would take the  
14 estimated hour just to ask Mr. Hutchins about these two  
15 columns?

16 MR. WOOD: No, Your Honor. If we're already  
17 deposing him on other issues that are related to these  
18 spreadsheets, I think we can withdraw our request for  
19 additional time if they will agree that we can ask him  
10:40AM 20 questions about the spreadsheets.

21 MR. PRABHAKAR: Oh, I would -- they can ask  
22 whatever questions they want, Your Honor. These  
23 spreadsheets are within the scope. So we would have no  
24 objection.

25 THE COURT: Okay. All right. So we'll

1 consider that one resolved and the questions about these  
2 two columns will be posed to Mr. Hutchins. Okay.

3 Okay. Dispute number three. It appears that  
4 this was resolved in that Extreme was going to respond  
5 on March 29th. So, has that been done?

6 MR. WOOD: Your Honor, we never received an  
7 update. We never received an update on March 29th to  
8 those interrogatories.

9 THE COURT: Okay. So, what's the status,  
10:41AM 10 Mr. Prabhakar, and this would be responses to  
11 Interrogatory 1 and 5 with responses by March 29th?

12 MR. PRABHAKAR: Your Honor, I'll have to check  
13 with my team because my expectation is these should have  
14 been done. If they have not been done, we'll produce  
15 them in a couple days. I'll be back -- we can certainly  
16 have -- if they have not been updated, and I will look  
17 into it, but we can have them updated by early next  
18 week, Monday or Tuesday, no problem.

19 THE COURT: Okay.

10:42AM 20 MR. PRABHAKAR: But -- I mean, the intent was  
21 to update them, but I'll have to look into them as to  
22 why they didn't get updated.

23 THE COURT: Okay. So it appears this can be  
24 resolved. He'll check the status of it. If they have  
25 not been provided, which sounds like you haven't

1 received them, then they will be provided to plaintiff  
2 by end of day Tuesday.

3 MR. PRABHAKAR: That's right.

4 THE COURT: Okay. Dispute number four. This  
5 also looks -- it appeared that there was just maybe a  
6 date needed for the supplementation. What's the status  
7 of this? And this is the response to Interrogatory 7, 8  
8 and 11.

9 MR. WOOD: So, Your Honor, we did receive a  
10:43AM 10 supplement on March 29th to 7, 8 and 11. We do not  
11 believe those responses still completely answer the  
12 questions, and --

13 THE COURT: Have you had a discussion as to why  
14 you do not feel that they are complete with Extreme?

15 MR. WOOD: We have not.

16 THE COURT: Okay.

17 MR. WOOD: So --

18 THE COURT: And what about No. 7?

19 MR. WOOD: Well, that's -- yeah, for 7, 8 and  
10:43AM 20 11, I was lumping those altogether.

21 THE COURT: Okay. I just heard 8 and 11 you  
22 felt were incomplete responses, but you included No. 7?

23 MR. WOOD: Yes.

24 THE COURT: Okay.

25 MR. WOOD: Parts of 7 are complete and parts

1 are not. So, I think that, you know, they have said  
2 they will supplement and, I believe, provide complete  
3 answers. So if we could just -- I think we just need to  
4 have a schedule in order to do that, and we'll be glad  
5 to meet and confer with them on that.

6 THE COURT: Okay. I've asked you to try to  
7 meet and confer after the hearing --

8 MR. WOOD: Yes.

9 THE COURT: -- on another issue. Will your  
10:44AM 10 schedules permit for you today to include this as well?

11 MR. WOOD: I can.

12 MR. PRABHAKAR: Of course, Your Honor. I'm  
13 happy to hear what Mr. Wood has to say.

14 THE COURT: Okay. It will be hard for me to  
15 address it --

16 MR. WOOD: Yes.

17 THE COURT: -- unless you all have had a  
18 meeting and address it amongst yourselves first. So --

19 MR. WOOD: Okay.

10:44AM 20 THE COURT: Okay. Try to meet and confer on  
21 that today. And I would like to have a status report by  
22 next Wednesday on these issues that you will be meeting  
23 on.

24 MR. WOOD: Okay.

25 THE COURT: And make it a joint report, please.

1 MR. WOOD: Okay.

2 THE COURT: All right. So, let's see, those  
3 are the four discovery disputes I had for plaintiff. So  
4 now we can move to Extreme's.

5 The first dispute is plaintiffs' response to  
6 RFP No. 30, and this is dealing with the different  
7 version labels. I guess I want to better understand why  
8 Extreme needs these.

9 MR. PRABHAKAR: Sure, Your Honor.

10:46AM 10 Your Honor, this case is all about source code  
11 on each side. We've produced source code; they have  
12 produced source code. This is a fairly narrow request.  
13 But to set the table, let me quickly walk through what  
14 do we mean by versions that we're requesting and what we  
15 have and what we don't have.

16 So, this is a page from the Plaintiffs' Amended  
17 Complaint, and these are their copyright registrations  
18 (indicating). Each registration corresponds to specific  
19 versions of source code. So, there is Version 15, 15.2,  
10:46AM 20 3, 4, so on and so forth. So, these are the versions  
21 that are explicitly in the case.

22 Now, there is law on the copyright side that  
23 says when you're registering versions, in certain  
24 circumstances, if the code is published, you need to  
25 provide the delta or the published version, and which is

1 what puts versions that came before 15 at issue.

2 So, the request for versions is basically, we  
3 have their source code. We have source code, some of  
4 which was shipped to Extreme, but we don't know and  
5 there is no representation that source code corresponds  
6 to specific copyright registrations because the code has  
7 been updated and issues may have been fixed.

8 So there is no -- as of -- the format in which  
9 the code has been produced to us on the source code  
10 computer, there is no correspondence between what has  
11 been produced and these specific versions. So our  
12 request to plaintiffs was that please produce these  
13 versions and the previous version and we'll be done with  
14 this.

15 Plaintiffs' response was twofold; that they  
16 provided several versions of code produced to Extreme.  
17 I just explained that's not the versions that correspond  
18 to the registrations. Because the scope of the  
19 registrations has to be clear, we need source code  
20 corresponding to each one of these versions.

21 Now, plaintiffs' response is that they have  
22 produced their entire repository, and that is correct,  
23 but a repository is a meld of versions produced since  
24 1994. So, just by the registrations, we're at Version  
25 17, and I think 17 was registered in 2011. We are 13

1 years or so later. So there might be additional  
2 versions that might have been added to the code.

3 So, the bottom line is: There are lot of  
4 versions in that repository. And we are not the  
5 custodians of that code, so we don't know how plaintiffs  
6 versioned them, how to extract them, particularly the  
7 versions that are associated with the copyright  
8 registrations.

9 So we've just requested plaintiffs to just  
10:49AM 10 produce -- they already have the repository. They just  
11 have to run a command or a few commands, extract these  
12 versions that correspond to these versions.

13 And for the other versions, we had asked  
14 plaintiffs, like, look, we don't know how you version  
15 your software. Everybody does it differently. Extreme  
16 has three different softwares at issue in this case.  
17 Each one of them within the company's versioned  
18 differently.

19 And to set the context for why we can't do it  
10:49AM 20 ourselves is: I'm going to show you questions that were  
21 asked of Extreme's witness related to the repository.  
22 So, this is -- this is an issue that plaintiffs are  
23 familiar with. So they asked our witness that instead  
24 of extracting 800 different versions, could you not have  
25 just produced the different repositories and have SNMP

1 extract the code and that would have accomplished the  
2 same thing.

3 And this is not attorney argument, Your Honor,  
4 this is a technical witness answering this question.  
5 Assuming SNMP Research knew how to access the correct  
6 tag of the repository, they could have done it. And the  
7 only way SNMP Research would know a correct tag that  
8 Extreme uses is if Extreme tells them what the tag is.

9 So, this was basically our request. We thought  
10:50AM 10 it was a fairly straightforward, noncontroversial  
11 request. So -- but the plaintiffs are standing on the  
12 fact that they have produced the repository and they  
13 need to do no more.

14 There was a concern that we didn't make an  
15 explicit discovery request for these documents. Your  
16 Honor, I mean, this is just document production that's,  
17 like, easily resolved between the parties rather than  
18 making a request and then framing it in more legal  
19 terms. But to resolve that, we even served that  
10:51AM 20 request. The time for responding to that request has  
21 passed. We still don't have a document that lists out  
22 all the tags in the repository that we could use to get  
23 access to these versions.

24 So, to frame my request for the Court, we ask  
25 that plaintiffs be ordered to produce from their

1 repository, or whatever other source that they have,  
2 source code corresponding to the versions associated  
3 with each copyright registration. And if it's too  
4 burdensome for them to extract the other versions in the  
5 repository, just provide us with a document or documents  
6 that -- excuse me -- identify all the tags, all the  
7 versions associated with the code in the repository, and  
8 we'll work with our expert to get that information  
9 extracted in a reliable fashion.

10:52AM 10 So, it's -- that's the scope of Extreme's  
11 request, Your Honor.

12 THE COURT: Okay. Thank you.

13 Mr. Wood, what's your response as to how to get  
14 this information that correlates to the versions?

15 MR. WOOD: So, first, Your Honor, I think we've  
16 skipped a step. If you look at RFP 30, which we  
17 responded to long ago, it says, "To the extent not  
18 already provided, all source code that you contend is  
19 covered by the copyright registrations listed in Table 1  
10:53AM 20 of the Amended Complaint."

21 For the Table 1 of the Amended Complaint, we  
22 have provided the -- all of that source code.

23 THE COURT: And that's what's being referred to  
24 as the repository?

25 MR. WOOD: No, Your Honor.

1 THE COURT: Okay. So, clarify that then.

2 MR. WOOD: So, we -- so, that's -- so, the  
3 repository, as Mr. Prabhakar said, is all of the source  
4 code. It goes back to '94. So it will be lots of  
5 versions of the code. And -- but then you -- if you  
6 look at that chart, one of them may be 15, Version 15.2  
7 of the software that was registered.

8 Well, SNMP Research provided that version that  
9 was extracted from the repository to Extreme and did  
10 that for every single one of the versions. We also  
11 provided a lot of other versions that happened  
12 in-between. So you may have Version 15.2, and then  
13 there may be three changes, you know, 15.2.1, and then  
14 there may be 15.2.2.

15 So there is a lot of little versions that  
16 happened between the big versions, and -- but we  
17 put -- this RFP asked for the source code that is  
18 covered by the copyright registration. That's exactly  
19 what we provided. And it's right out of the repository.  
20 That's what we gave them.

21 Now, what -- so, if all they're asking for is  
22 the source code -- if all they're asking for is a  
23 response to this RFP, we've completely done that.

24 What they have said to this is, no, you need to  
25 give us every other version there is that's in your

1 repository as well. You need to extract all of them and  
2 let us see what every single one is. Like, well, this  
3 RFP doesn't ask for that. We've done exactly what  
4 you've asked. And we gave you the repositories. If you  
5 want to look at some other versions or look at  
6 old -- they have everything we have.

7 But we think we've completely responded to this  
8 RFP. If they want to ask about other versions or old  
9 versions, I think they need to serve another RFP, which  
10:55AM 10 they have now done because I think they realized this  
11 one doesn't do -- this one doesn't ask for other  
12 versions.

13 THE COURT: So what's the status of the  
14 response to their new request?

15 MR. WOOD: We have responded -- we have  
16 responded to that, and I think we're still in the -- we  
17 haven't heard back from them on our response.

18 THE COURT: Okay. So this new request more  
19 explicitly addresses what we're talking about today?

10:56AM 20 MR. WOOD: I think it does. Mr. -- I don't  
21 want to speak for Mr. -- it's Extreme's request. So, I  
22 think that it more explicitly addresses what they're  
23 trying to do.

24 To me, they have -- we have responded to this  
25 question. They want additional information. Instead of

1 asking for a new request, they tried to fit it under  
2 this one.

3 THE COURT: Well, now there is a new request.

4 MR. WOOD: And now there is a new request. So  
5 they have finally issued a new request, which we've just  
6 responded to recently, and we haven't heard back from  
7 them on our response. So, we're still in the 14-day  
8 response period.

9 THE COURT: Okay. So, Mr. Prabhakar, is it  
10:56AM 10 that this issue -- it sounds like it may be moot if you  
11 have issued a new request that more explicitly addresses  
12 what you just explained to me you're seeking.

13 MR. PRABHAKAR: May I, Your Honor --

14 THE COURT: Oh, yes.

15 MR. PRABHAKAR: -- just briefly explain?

16 THE COURT: And I don't mean to cut you off,  
17 Mr. Wood. I'll let you further respond. I want to get  
18 this clarified because I don't want to spend a lot of  
19 time on this if you're already responding to another  
10:57AM 20 request that more directly addresses the matter.

21 MR. WOOD: We think we've fully responded to  
22 this request as written.

23 THE COURT: Okay.

24 MR. WOOD: We think they have everything they  
25 need. I think there is discussions for us to have on do

1 they really need us to extract every single version, as  
2 they say. We don't think they do. They have the source  
3 code that we've filed with the Copyright Office, which  
4 is the basis of our claim.

5 THE COURT: Okay.

6 MR. WOOD: So --

7 MR. PRABHAKAR: So, Your Honor, I'll try to be  
8 brief, but I do want to emphasize the fact that this is  
9 a dispute about intellectual property. It's a dispute  
10 about property rights. And as with any other property  
11 rights disputes, whether it's real property,  
12 intellectual property, patents, whatever, it is  
13 extremely important that the scope of the property right  
14 is clear.

15 Now, I don't know what Mr. Wood is referring to  
16 that we have produced the registration that we've  
17 provided to the Copyright Office because that's only  
18 50 pages, and that's certainly not the full extent of  
19 their source code.

10:58AM 20 So, I do not see, based on the manifest files  
21 and based on what my expert has looked at, the versions  
22 corresponding to the registrations in the source code.  
23 And I don't think --

24 THE COURT: Well, let me stop you there because  
25 you put that chart up, and you said that was the

1 versions that were part of the Complaint. And, so, what  
2 I hear Mr. Wood saying, they have provided the source  
3 code that corresponds to all of that and that he's  
4 reading your request to be beyond that, and that now  
5 you've served a new request, that would cover that.

6 So, to the extent there has -- do you agree  
7 that they have responded to the initial request and  
8 provided the source code for those versions that you  
9 showed the Court?

10:58AM 10 MR. PRABHAKAR: No, Your Honor. We disagree  
11 with that representation, and I'll explain why.

12 THE COURT: Okay.

13 MR. PRABHAKAR: So -- and it gets into a little  
14 bit of the weeds of copyright law because the request is  
15 all source code that you contend is covered by copyright  
16 registrations.

17 Now, they started registering Version 15. Now,  
18 if they represent -- and if plaintiffs represent --

19 THE COURT: Let me stop you right there. So,  
10:59AM 20 just to make sure I stay on the same page, it says  
21 "covered by copyright registrations listed in Table 1."

22 MR. PRABHAKAR: Yes, Your Honor. And Table 1  
23 was the one that I just showed you.

24 THE COURT: Yes.

25 MR. PRABHAKAR: So -- but the question is

1 source code covered by those registrations.

2 Now, I showed you Version 15. So, if we just  
3 go by -- in tiers, there are 14 versions that preceded.  
4 Plaintiffs have not taken the position that the first 14  
5 versions are not covered by the registration. So,  
6 arguably, they should produce Version 1 through 14  
7 because their contention is that all prior versions are  
8 also covered by the registration.

9 THE COURT: Okay. But does -- that gets to  
11:00AM 10 this new request. Does that new request  
11 cover -- because that's what I'm hearing Mr. Wood  
12 explain.

13 MR. PRABHAKAR: Yes. And, Your Honor, because  
14 this issue is so central to the case, we issued the new  
15 request so that plaintiffs do not have an argument that  
16 we didn't understand the scope of this request.

17 Our belief is that the request for prior  
18 versions is covered by 30. But to leave no doubt, we  
19 served the new request.

11:00AM 20 And I will assure Your Honor that what I said  
21 just moments ago for at least the versions that are not  
22 explicitly mentioned in Table 1, Extreme is willing to  
23 compromise and reduce the burden if they would just give  
24 us a document with the version tags, and which is what  
25 months ago, I had asked Mr. Wood in a meet and confer,

1 that why don't you just give us the tags and we'll have  
2 our expert figure out how to get it out.

3 So, I'm not even asking them anymore to extract  
4 all the versions for us. Just give us the information  
5 so that to the extent the versions are in the  
6 repository, we can extract them ourselves.

7 THE COURT: But he said that they have  
8 responded and they're within the time period for you to  
9 get back with him. Is it sufficient what they're  
10 producing now?

11:01AM

11 MR. PRABHAKAR: Well, they haven't produced  
12 anything, Your Honor, documents-wise. What Mr. Wood is  
13 saying that he has responded is that he has responded to  
14 the RFPs in the sense that he's served a written  
15 response to this stuff. There is not a single document  
16 that had been produced the day the response came in.

17 THE COURT: Okay.

18 MR. PRABHAKAR: We have -- and, by the way, to  
19 the point that, you know, we haven't raised an issue, we  
20 actually sent an e-mail last week asking for a meet and  
21 confer on their -- all their responses, not just the  
22 ones related to the versions issue, and we have not  
23 heard back yet on that specific request, and I think the  
24 seven-day period under Your Honor's new order runs out  
25 on this Friday.

11:01AM

1           So -- but I'm trying to simplify the issue  
2   that, for us, we need explicit versions extracted for  
3   the versions that are listed in Table 1. For everything  
4   else, we are fine with them just producing a document  
5   which identifies all the versions and we will figure out  
6   what do we need out of those and how to extract them  
7   because our expert reports under the current deadline  
8   are due in a couple of weeks, April 30th.

9           We -- even if we engage in the meet and confer  
11:02AM 10   process, Your Honor, that clock for us is ticking, and  
11   that's why we had raised this issue long ago. But at  
12   least we need the specific versions for code that's in  
13   the versions identified in Table 1.

14           THE COURT: Okay. So, Mr. Wood, can you  
15   respond to his position?

16           MR. WOOD: Yes. What I heard him say is, we  
17   need the specific code for those versions identified in  
18   Table 1, and that's exactly what we gave them. What  
19   they're asking for is additional versions.

11:03AM 20           THE COURT: Yeah, the ones leading up to those,  
21   the --

22           MR. WOOD: Yeah.

23           THE COURT: -- prior versions is what he said.

24           MR. WOOD: And maybe all the ones in-between.  
25   And they have some of those. We gave them everything

1 that was shipped to Extreme.

2 I think we're -- what we're -- we're having a  
3 debate over an RFP that's not even before you is our  
4 view. He's -- they're trying to argue the new RFP that  
5 they wanted. We're trying to somehow shoehorn that new  
6 RFP into this one.

7 THE COURT: Well, he's -- I understand that  
8 it's saying that it's included within this. But now  
9 he's issued the new one to sort of clarify things. So,  
11:04AM 10 I'm wondering -- I mean, can you all discuss this and  
11 resolve it?

12 MR. WOOD: So let me --

13 THE COURT: I had misunderstood and thought you  
14 had responded with documents, and that doesn't seem to  
15 be the case.

16 MR. WOOD: No.

17 THE COURT: So, is --

18 MR. WOOD: I think the way they have asked, the  
19 RFP is still overly burdensome because they want every  
11:04AM 20 single version. We don't see why that's --

21 THE COURT: Well, he said he was -- he was  
22 willing to narrow it.

23 MR. WOOD: We haven't had that discussion. And  
24 to his point, we actually had a meet and confer  
25 yesterday with Extreme's counsel. We offered to go

1 through these RFPs. They did not want to do that.

2 So they have sent us an e-mail. We have  
3 responded. On the meet and confer yesterday, we offered  
4 to go through these RFPs and Extreme counsel didn't want  
5 to do that. So I just want to correct the statement  
6 that we haven't responded or haven't been willing to  
7 engage because we are. That's on the new ones.

8 But that -- so, the issue of what's actually  
9 registered, what's registered is a particular source  
11:05AM 10 code file, lots of files. And if there is a copy of  
11 that file in an old version or a new version, that  
12 should also be registered as well.

13 Extreme has taken the position in this  
14 litigation early on that -- so, for example, we  
15 registered Version -- all the source code that was in  
16 Version 16.2, and what we shipped to Extreme, I think,  
17 was 16.4 or 6. So some version in-between. And they  
18 said, well, since you didn't register that version, then  
19 you can't pursue your copyright claim. We said, no,  
11:05AM 20 it's the code. It's not the label. It's the code that  
21 we registered, and the code in that one is almost  
22 exactly the same as 16.2, and what wasn't registered  
23 there was registered in the next one, so you don't need  
24 all of that.

25 And they're kind of back to the same argument,

1 which is, oh, you didn't -- they're trying to say it's  
2 the version that's registered and not the actual source  
3 code that's in that version tree.

4 And the way copyright law works is, I mean, if  
5 you register a book, even if there is a new edition of  
6 that book, what you registered in the first edition  
7 is -- to the extent it's the same in the second edition,  
8 it's still registered. You still have a copyright. You  
9 don't have to register every single version.

11:06AM 10 So we've given them all of the code that's  
11 registered and it's represented in that table. To the  
12 extent they're copies, it's also registered. But they  
13 don't need all those versions is our position.

14 And that's the discussion we need to have on  
15 this new RFP. What do you -- what do you really need?  
16 If you want to just look at it to see how it's changed,  
17 we can help them do that in the repository. I think  
18 they probably already can.

19 I will say the testimony he put up was about  
11:07AM 20 Extreme's repository, not about SNMP's repository. So,  
21 does that answer that question?

22 THE COURT: Uh-huh. It just sounds like it  
23 would be helpful to have the conversation so that  
24 they're not spinning wheels if they have some direction  
25 on how to work through it to extract maybe what they

1 need.

2 MR. WOOD: Okay. And we'll be glad to have  
3 that meet and confer with them to get exactly what they  
4 need if this will -- you know, to resolve the new RFP.  
5 But we really think we've fully responded to the  
6 existing one that's before you.

7 THE COURT: Okay.

8 MR. WOOD: Thank you.

9 MR. PRABHAKAR: Your Honor, only because this  
11:07AM 10 is important for us, I'm going to take a few more  
11 minutes of your time.

12 I don't think there is any dispute based on the  
13 language of RFP 30 that the source code that plaintiffs  
14 contend is covered by these registrations is within the  
15 scope of 30. And source code corresponding to these  
16 versions in a directory that says Version 15, 15.2 is  
17 not present on the source code computer.

18 So, if Mr. Wood's contention is that we've  
19 produced the registration that we submitted to the  
11:08AM 20 Copyright Office, which it's a little unclear to me,  
21 even today, what is he contending is produced on the  
22 source code computer. But what our contention is, there  
23 are no directories in the repository today corresponding  
24 to Version 15, 15.2, 15.3 and every version that's  
25 listed out here.

1           And since that's the scope of at least the  
2 registration that's at issue, we can have an argument in  
3 the expert reports about deltas or these versions,  
4 whether they are covered, not covered, all of that. We  
5 can have that argument in the expert reports. That's a  
6 different fight. But having directories which represent  
7 that this is source code for Version 15 that was  
8 registered under Registration No. 1-706-718 is not  
9 present. If Mr. Wood can tell us right now that if  
11:09AM 10 that's on the source code computer, not sitting in some  
11 PDF file, I think we don't have to take any more of your  
12 time.

13           THE COURT: Okay. Because, Mr. Wood, what I  
14 understood you to say is that it's there, but what I'm  
15 hearing him say, they can't find -- it's not a direct  
16 corresponding file where they can find it.

17           MR. WOOD: Your Honor, it's --

18           THE COURT: So can you help with that?

19           MR. WOOD: Unless it was somehow removed, it's  
11:09AM 20 there. So when we set up the source code computers two  
21 years ago, I actually went to California. I supervised  
22 setting them up and getting the source code on there.  
23 And this was part of -- these source code trees were  
24 part of what we put on there.

25           If somehow they're missing, they can't find

1     them, we've met and conferred on this issue multiple  
2     times. This is the first time I've heard they're  
3     missing source code for the actual registration trees.

4             I would have been glad -- because I agree, if  
5     we didn't produce the source code for the registration  
6     trees, that's exactly what's responsive to these RFPs.  
7     And we kept saying we did it, and they said, well, we  
8     need all the other versions. We said, this doesn't ask  
9     for all the other versions, and we don't even -- we  
11:10AM 10     think that's burdensome to go get every single version.

11            Anyway, we had that argument over and over and  
12     over again. I never heard that they didn't have the  
13     source code for the actual registration trees until just  
14     now. So, if that's --

15            THE COURT: Well, that sounds like there is  
16     something amiss. You said you provided it. They're  
17     representing that they can't find how it -- in a  
18     directory or anything to correlate to those listed. So  
19     it sounds like --

11:11AM 20            MR. WOOD: So we can work that out.

21            THE COURT: -- the parties need to get together  
22     and discuss this and figure out what the issue is.

23            MR. WOOD: So if that's the only issue now in  
24     RFP 30, we can work that out. Either we'll point it to  
25     them, if it somehow got deleted in the last two years,

1 we'll put it back on there, but --

2 THE COURT: And then have the discussions on  
3 the outstanding request as well since it seems to go  
4 beyond just the ones listed in the Complaint to see if  
5 you can resolve that as well.

6 MR. WOOD: Yes.

7 THE COURT: Okay.

8 MR. LEE: Judge, just -- if I may, just from a  
9 timing standpoint, we're running out of time to get this  
11:11AM 10 done. I mean, we're happy to meet and confer. We will  
11 meet and confer. But, like, I --

12 THE COURT: You have to on this issue. There  
13 is nothing I can do until we know what the problem is.

14 MR. LEE: Well, we've got to find a way to  
15 fast-track this and then have a backstop to it because  
16 we've got our expert reports due.

17 THE COURT: Uh-huh. I want a status report by  
18 next Wednesday on this. So, you all have to work in  
19 your meet and confer between now and give yourselves  
11:12AM 20 time to do that joint report due Wednesday.

21 MR. PRABHAKAR: Okay.

22 THE COURT: All right. The second dispute is  
23 responses to 90, 128 and 129. I've reviewed the  
24 position statements. Is the issue just the  
25 identification of the custodians?

1 MR. PRABHAKAR: Yes, Your Honor, that's about  
2 it.

3 THE COURT: Can this not be easily resolved,  
4 Mr. Wood?

5 MR. WOOD: Are you saying that the only issue  
6 is the --

7 THE COURT: To identify the custodians.

8 MR. WOOD: Yes, that's -- we don't have  
9 any -- we don't have any problem doing that. We've  
11:13AM 10 actually -- we made a proposal to them on what we would  
11 run, which was actually across all the custodians that  
12 we have for e-mails. So there is no -- it's all the  
13 e-mails we've collected for all the SNMP Research  
14 employees and agreed to some of the searches and thought  
15 some were overly burdensome.

16 We've made that proposal on March 31st. We  
17 have not heard back from them. We have run the searches  
18 that we thought were reasonable. We have already  
19 produced the documents. And, so --

11:13AM 20 THE COURT: So, with the documents,  
21 Mr. Prabhakar, do you -- truly, do you just need the  
22 identification of the custodians now?

23 MR. PRABHAKAR: I think so, Your Honor, because  
24 the documents have just been produced late on April 9th,  
25 and I was on a plane all day yesterday, so I haven't put

1 my eyes on them.

2 I think we're fine with the search terms they  
3 ran. We're not -- we understand the ones that they're  
4 claiming are overly burdensome. Some of them relate to  
5 the Brocade products where we don't have this -- the  
6 same relevance as we have for the Extreme products. So  
7 it's really just about identification of the custodian  
8 and that's about it.

9 THE COURT: Any problem doing that before next  
10 Wednesday?

11:14AM

11 MR. WOOD: No, Your Honor.

12 THE COURT: All right. Dispute number three.  
13 This is plaintiffs' responses to RFPs 29 and 152, and  
14 this is dealing with the marketing materials.

15 MR. PRABHAKAR: So, Your Honor, we've discussed  
16 this with plaintiffs multiple times, and I think I  
17 understand what they have responded in their position  
18 statement. I just am having difficulty reconciling  
19 that, their statement that they don't have marketing  
20 personnel, they don't produce advertising or marketing  
21 collateral other than the website.

11:15AM

22 So if I understand plaintiffs' statement, all  
23 of their marketing and advertising is done by their  
24 website, and somehow that is not borne out by some of  
25 the documents that have been produced in this case.

1 And --

2 THE COURT: Can you point to those?

3 MR. PRABHAKAR: Yes, Your Honor. I was just  
4 getting there next.

5 THE COURT: Okay.

6 MR. PRABHAKAR: So, this is one of the  
7 documents that's been produced in this case  
8 (indicating). It very clearly says "Marketing Plan."  
9 And I have not seen a marketing plan, at least for the  
10 specific product that's at issue here.

11:15AM

11 But even then, in this marketing plan, there  
12 are express references to other marketing collateral  
13 which I have also not found. It says very clearly that  
14 there is updating sales and marketing materials. It's  
15 not saying the website. It talks about a mailer to  
16 customers and talks about marcom material. It talks  
17 about trade shows, all of which relate to marketing and  
18 advertisements.

19 I will show you another document that  
11:16AM 20 plaintiffs have produced in this case which expressly  
21 refers to work that they were doing for advertisements  
22 (indicating). And this is Mr. Butterworth submitting a  
23 report internally which refers to ad work to bring ideas  
24 together. It talks about Wind Forum 2001, which appears  
25 to be a trade show. Talks about -- you know, references

1 companies that does marketing, talks about contracts for  
2 ads.

3 Here is another report from Mr. Butterworth  
4 (indicating). It talks about press work. We've asked  
5 for press releases. Talks about a press list.

6 So, I'm not sure what to make of plaintiffs'  
7 assertion that the sole source of marketing and  
8 advertising is the website. And given that they have  
9 marketing plans -- and there is just -- more than one.

11:17AM 10 Here is another one for marketing (indicating). And at  
11 the bottom of this, it again talks about preparing for  
12 marcom materials, which I understand may be marketing  
13 communications material in February 2002 in preparation  
14 for a 2002 trade show.

15 So, there is a little bit of disconnect. And  
16 certainly this statement in plaintiffs' response is  
17 inaccurate in the sense that they're saying that all of  
18 our marketing and advertising is done via the website  
19 because we're seeing some of these e-mails and documents  
11:18AM 20 that actually refer to marketing materials,  
21 advertisements.

22 It actually even references specific personnel  
23 who are doing marketing and advertising. I didn't put  
24 up all the documents because I don't want to take up the  
25 Court's time unless I have to, but that representation

1 in their response doesn't seem accurate and certainly  
2 all of that material is missing from their production.

3 THE COURT: Thank you.

4 Mr. Wood, how do you reconcile this?

5 MR. WOOD: So, Your Honor, those documents went  
6 by pretty quick, but I think --

7 THE COURT: Some of them were dated back in  
8 2001. So, I have a question: Is marketing just by  
9 website as of a certain date?

11:19AM 10 MR. WOOD: My understanding -- obviously  
11 Dr. Case knows this better than I do because I wasn't  
12 involved back then. But as of 9/11, SNMP Research  
13 stopped going to trade shows, and I think these were  
14 referencing trade shows and other things. We did  
15 produce --

16 THE COURT: Do you have any of that old trade  
17 show material?

18 MR. WOOD: There is a -- they have a directory  
19 that had product documents, like design documents. I  
11:19AM 20 think that's probably where these came from. We  
21 produced everything in that directory. And we've also  
22 produced the website. And then I have talked to my  
23 client, are there any other advertisements; is there  
24 anything else? We just don't do that.

25 THE COURT: Do you have marketing personnel?

1 MR. WOOD: No.

2 THE COURT: Ever?

3 MR. WOOD: Maybe to the extent -- I think  
4 Mr. Butterworth was a salesperson back then, but he may  
5 have done -- maybe he did some marketing. But I know  
6 since I've been involved with SNMP Research, which is  
7 2009, there have been no marketing personnel.

8 So maybe there are some old documents. I also  
9 find it interesting that we've met and conferred on this  
11:20AM 10 issue, I think, twice, and Mr. Prabhakar didn't share  
11 any of that information with us in the meet and confer.  
12 He waited until he got in front of you; whereas, we  
13 would have -- could have gone back and looked for  
14 something in 2001. I'm not sure exactly how that's  
15 exactly relevant, but -- given some guidance; otherwise,  
16 we're just looking across hundreds of thousands of  
17 documents, and since they don't have marketing  
18 personnel, I don't know of advertisements that they do.  
19 They're not advertising in magazines. They're not going  
11:21AM 20 to trade shows.

21 THE COURT: What do your salespeople do in  
22 trying to bring on new prospective customers? I mean,  
23 how do they communicate with them?

24 MR. WOOD: They are mostly -- it's almost all  
25 inbound as opposed to outbound. In other words, people

1 are just calling that they need -- there is so many  
2 customers and then they need a new product or they need  
3 something else. And --

4 THE COURT: Do they then send an e-mail  
5 communication in response to receiving a phone call; is  
6 that what you're saying?

7 MR. WOOD: So, someone -- it's usually an  
8 existing customer, or someone has heard about us and do  
9 research because they have been around so long in the  
10 industry and that customer will contact SNMP Research.  
11 We're not -- I'm not aware of outbound marketing  
12 solicitations.

13 THE COURT: It would just be in response to a  
14 call.

15 MR. WOOD: Right.

16 THE COURT: Okay.

17 MR. WOOD: So, my comment to Mr. -- in the meet  
18 and confer was, I can't guarantee you over the course of  
19 25 years there hasn't been a solicitation to a customer,  
20 but I don't know how to ferret that out from all these  
21 communications to all these different customers.

22 But I know there is no marketing person, you  
23 know, that's actively doing that and sending these out,  
24 which is what you would normally do is go look. You  
25 know, okay, let's see the e-mails they sent because

1 that's what they're doing, once a quarter they're  
2 sending out a newsletter, or something like that.

3 So, I mean, we can go back and look, you know,  
4 in the 2001 time frame and see if we can find some of  
5 those other documents. Like I said, we did produce --  
6 I'd like to see these particular ones. Hopefully they  
7 will share them with us so we can see exactly where they  
8 came from. I suspect they came from this product  
9 materials directory that -- and we produced everything  
10 in there.

11:23AM

11 THE COURT: Okay.

12 MR. WOOD: And most of it was design -- like,  
13 okay, we're coming out with a new release, here is  
14 our -- what we're going to do with it kind of thing.

15 THE COURT: Okay.

16 MR. WOOD: So --

17 THE COURT: Mr. Prabhakar, can you tell me if  
18 that information did come from the product materials  
19 directory that they produced?

11:23AM

20 MR. PRABHAKAR: I have no means of knowing that  
21 information, Your Honor.

22 THE COURT: Okay.

23 MR. PRABHAKAR: I mean, I just get them in a  
24 production format.

25 THE COURT: Well, it sounds like it would be

1 most efficient for you to sit down and show those  
2 examples to Mr. Wood and let them --

3 MR. PRABHAKAR: Right.

4 THE COURT: -- see what they have. He says  
5 they don't do trade shows since 9/11, and now he's  
6 explained, like, what their salespeople do in response  
7 to an inquiry. So it sounds like a more thorough  
8 discussion about the marketing and sales would be  
9 helpful. And then you have the specific -- and you said  
10 you had more examples. I know you just gave a sample.

11:23AM

11 MR. PRABHAKAR: I can show you one more just to  
12 address this concern that how do we look for  
13 solicitation e-mails and all.

14 This is another example of a daily report from  
15 2006, actually (indicating). Again, I -- I do not want  
16 to offend anybody by doubting the representation that  
17 they don't do trade shows. But at least this daily  
18 report has a column that says Trade Shows and Marketing  
19 or Website as recent as 2006. And the reports that we  
20 just saw about trade shows actually postdated 9/11. But  
21 I don't want to offend anybody by saying that I don't  
22 believe you.

11:24AM

23 THE COURT: Well, it may be that he -- with  
24 this information, he can ask more tailored questions --

25 MR. PRABHAKAR: Yes.

1 THE COURT: -- to get the information.

2 MR. PRABHAKAR: Right. But there does seem to  
3 be a specific mechanism by which customers reach out to  
4 them and then they respond. There is, like, web  
5 queries, info prospects.

6 As Your Honor knows, sometimes companies have a  
7 website through which you can send in a query which  
8 triggers the marketing people to respond. So, clearly  
9 there is a directed way. I'm sure there is an e-mail  
10 address to which those queries go.

11:25AM

11 THE COURT: Okay.

12 MR. PRABHAKAR: And that's what we've been  
13 asking for. And I didn't mean to say that we didn't  
14 share this information because, you know, that's kind of  
15 in opposite order. We met and conferred, raised the  
16 issue with the Court, and then in response, Mr. Wood  
17 said certain things; we don't do marketing; we don't  
18 have marketing personnel. In a small company, sales and  
19 marketing are often melded. You don't want to have too  
20 many silos. But, really, it's not the label of the  
21 personnel that's important, it's the function.

11:25AM

22 THE COURT: Uh-huh.

23 MR. PRABHAKAR: And I think to the extent  
24 solicitation e-mails are a problem to search, I think  
25 this document offers -- I mean -- and I don't know why

1 we would have to identify that because SNMP knows best  
2 about how they get contacted.

3 And all of this information is relevant for  
4 damages, including the 2001 time frame, because that's  
5 how we understand what the value of the business was in  
6 2001. It's relevant throughout because how extensively  
7 plaintiffs reach out or contact prospective customers is  
8 also relevant to the publication of their copyrighted  
9 material because there is case law that says that if  
10 you're soliciting business extensively for your  
11 software, that can constitute publication of that  
12 software, which is why -- another additional reason  
13 besides damages why this information is relevant, Your  
14 Honor.

15 THE COURT: Okay. All right.

16 Mr. Wood.

17 MR. WOOD: Just one other thing. Dr. Case  
18 corrected me. He said they were at a trade show during  
19 9/11 -- probably Interop in Atlanta -- and they already  
20 had some booked for the next year. So they did attend  
21 some trade shows in --

22 THE COURT: That extended beyond.

23 MR. WOOD: Yeah, they did attend some trade  
24 shows the next year. Maybe there was a small one. I  
25 think that -- anyway, we'll be glad to talk to them and

1 look at this information.

2 THE COURT: The reference, I believe, was to  
3 2006, and it had trade show or website on there. So --

4 MR. WOOD: Yeah, which -- and if, you know,  
5 this -- I hadn't looked at that document until he just  
6 showed it. But it looks like -- that looks like a  
7 template. So -- and I know that SNMP Research personnel  
8 have daily reports that they file, and I think that's  
9 what that was, and that was a template, are you doing  
10 anything in this area. So, I didn't see anything  
11 underneath it. It says that just because it had the  
12 word "trade show."

13 THE COURT: Well, it sounds like you all need  
14 to discuss this further as well, so add this to your  
15 list for the report next Wednesday.

16 All right. Dispute number four. This  
17 addresses plaintiffs' responses to Interrogatories No. 6  
18 and 7, and there is an issue whether this one was  
19 timely.

20 So, Mr. Prabhakar, I'd like for you to address  
21 that when you're stating your position on it, too.

22 MR. PRABHAKAR: Sure, Your Honor. So, in terms  
23 of timeliness, I can represent to you, Your Honor, we've  
24 actually sent out letters to plaintiffs about their rog  
25 responses way back in August of last year. None of

1 these requests that we're discussing here today are of  
2 recent vintage. We've been trying to get these  
3 materials since last fall, and plaintiffs have  
4 represented before that that their document production  
5 and discovery is substantially complete.

6 But these requests have been served in 2023.  
7 And these are deficiencies that we have informed them  
8 about during meet and confers over the years. We had a  
9 specific meet and confer, and there is so much material  
10 to discuss, Your Honor, there are so many discovery  
11 issues that we're chasing right now that in an hour-long  
12 meet and confer, certain things get discussed in detail,  
13 certain things get discussed superficially, and I  
14 believe this is one of those that got discussed  
15 superficially.

16 But the deficiencies are -- at least to us,  
17 seem apparent on the face, and we identified some of  
18 them. But, like, plaintiffs' response talked about Rog  
19 7 but didn't particularly talk about Rog 6.

20 So, here is a statement in their response to  
21 Rog 6 about facts related to the license. And keep in  
22 mind that our request calls for all facts related to  
23 their contention that Extreme has breached a license.  
24 So it's in some sense asking for everything that the  
25 plaintiffs are going to rely on in this case.

1           And I'm showing you a later response  
2     (indicating). This is not even the response that we had  
3     when the issue was raised because Your Honor had ordered  
4     plaintiffs to supplement removing the subpart objections  
5     and this is post that.

6           There is an assertion about licensee's network  
7     switch project. I don't see any citation. Where is  
8     this statement coming from? What's the document that  
9     they rely on?

11:30AM 10           This response repeatedly talks about multiple  
11     products. You'll see this repeated in this response  
12     several times that Extreme copied their software in  
13     multiple classes of products totaling scores of  
14     products.

15           They talk about it on the next page. This  
16     response basically says the same thing over and over  
17     again without actually giving us the answer that we  
18     want.

19           If there are scores of products, I don't see an  
11:31AM 20     identification in this response. They talk about an  
21     authorized combination of target processing, operating  
22     systems that were authorized under the license, and  
23     their contention is that there are certain products that  
24     don't fall under that classification. I don't see an  
25     identification of those products.

1           And I have looked in the discovery that we have  
2 produced, and I'm pretty certain that they have all the  
3 information to respond to this interrogatory based on  
4 our document production. I don't see that.

5           There was an assertion in their response that  
6 we failed to maintain their copyright notice in the  
7 software, and their response, to date, served in  
8 March 2024, is that Extreme has not produced source code  
9 and install images.

11:32AM 10           I was here in front of you, Your Honor, in  
11 November, and I told you that the install images have  
12 been produced. I don't think we've heard before today  
13 that somehow the source code production is deficient.  
14 And yet as of March 2024, this is how plaintiffs'  
15 response reads on Rog 6.

16           And I can move on to Rog 7 if Your Honor wants.

17           THE COURT: Yes, please.

18           MR. PRABHAKAR: I think Rog 7, particularly as  
19 it relates to Enterasys, we just don't have any facts  
11:32AM 20 related to either Enterasys' copyright  
21 infringement/breach of contract.

22           Your Honor may remember last time there was a  
23 discussion about Extreme's e-mail, which we presented  
24 that certain products are under the Enterasys license  
25 which Extreme said was a mistake. We presented to you,

1 Your Honor, that we're not going to rely on the  
2 Enterasys license form the EXOS products, and yet there  
3 is nothing in the rog response other than that e-mail,  
4 which now Extreme has responded to on the record, that  
5 the earlier e-mail was sent by mistake. We're not  
6 relying on that. We need to get updated contentions as  
7 it relates to the Enterasys products.

8 If we committed fraud related to the Enterasys  
9 products, we're entitled to know. If we breached the  
10 contract, we're entitled to know. If there is copyright  
11 infringement by Enterasys, we're entitled to know. But  
12 we don't have those facts.

13 And their response still is that we haven't  
14 completed the production of the full scope of  
15 information and I don't know what information is lacking  
16 to respond to this interrogatory. And if there is  
17 information that's missing, when was that dispute  
18 brought in front of the Court? And if it wasn't brought  
19 in front of the Court, then, really, is something  
20 missing, or this response needs to be updated because  
21 we're less than a week away from taking a couple of  
22 depositions and I just don't have basic facts to ask the  
23 witness, why do you contend this line of product  
24 breached the license or did something.

25 And these are interrogatories, Your Honor, that

1 have been outstanding since last year. I think they  
2 were -- if I remember correctly, they were served in  
3 March of 2023. We're now a year after and we're still  
4 chasing deficiencies.

5 THE COURT: Thank you.

6 Mr. Wood, I saw some indication in your  
7 position statement that you were willing to supplement.  
8 So, can you address that?

9 MR. WOOD: Yes, Your Honor. We do think a  
11:35AM 10 lot -- we never did meet and confer on these, but that's  
11 really beside the point because we're going to  
12 supplement anyway.

13 So, now that we have finished our expert  
14 reports, our initial expert reports last week, those  
15 expert reports have a list of products. I think our  
16 experts have done work on some of these other items,  
17 too. And, so, in -- it's in our interest to put that in  
18 these interrogatory responses, so we're going to do so.

19 We didn't -- we actually gave In- -- I think  
11:35AM 20 Interrogatory No. 6 was a ten-and-a-half-page response.  
21 We gave a pretty fulsome response. But now that we've  
22 had the expert reports, we're going to supplement. So I  
23 think that it's a nonissue.

24 THE COURT: And it will address the questions  
25 of what line of products breached whatever?

1 MR. WOOD: Yes, yes.

2 THE COURT: Okay.

3 MR. WOOD: And that's our -- our experts have  
4 identified those products, and, so, we'll put those in  
5 the interrogatory answers.

6 The one thing we right now don't intend to  
7 respond to because we don't think it's a part of the  
8 question is their 7-1, how the reported facts related to  
9 fraud relate to the legal elements of fraud. We don't  
11:36AM 10 think the interrogatory asked for a legal analysis, it  
11 just asked for the facts. And this -- that doesn't seem  
12 to be responsive to Interrogatory 7.

13 So that -- the others are just simply facts.  
14 Like, what are the products; what's your fact  
15 for -- that they removed the copyright notice. And, so,  
16 we'll -- you know, things like that.

17 This is, take your facts, which I think we've  
18 already given them, and apply them to the legal  
19 elements. One, the interrogatory doesn't ask that, and  
11:37AM 20 it doesn't necessarily seem like an appropriate use of  
21 an interrogatory. So we weren't intending to supplement  
22 and satisfy number one, 7-1.

23 THE COURT: Okay. All right. Thank you.

24 Mr. Prabhakar, does that resolve this, given  
25 that he said that they will supplement with the

1 information that's been compiled by their expert that  
2 would be specific to these questions except for 7-1?

3 MR. PRABHAKAR: I understand their position on  
4 7, Your Honor, at least related to the legal elements of  
5 fraud. All we ask at this time is a date certain for  
6 when the response would be provided.

7 THE COURT: And I was going to ask that. When  
8 do you intend to supplement?

9 MR. WOOD: If we could do that in two weeks, if  
11:37AM 10 that's sufficient.

11 THE COURT: Can you do it by next Friday?

12 MR. WOOD: Yes.

13 THE COURT: Okay. Next Friday.

14 All right. The next dispute, number five, this  
15 addresses plaintiffs' response to RFP No. 7. It looks  
16 like plaintiffs are stating that they have produced all  
17 of the responsive documents. So, Mr. Prabhakar, can you  
18 address your position on that?

19 MR. PRABHAKAR: Yes, Your Honor. And to give  
11:38AM 20 the Court some comfort, this is the last one because I  
21 think we're done on 10. So we don't have to discuss the  
22 next one, at least from our perspective.

23 THE COURT: Okay.

24 MR. PRABHAKAR: So, the plaintiffs produced 11  
25 documents which were related to third-party

1 contributors, and they were really just related to two  
2 third-party contributors, and we find that a  
3 little -- we're not quite sure if that truly is the full  
4 extent of third-party contributors for a couple of  
5 reasons.

6           So, in their license agreement with Extreme,  
7 under Patents, Copyrights and Trademarks, they discuss  
8 third-party contributors. Because, as you can  
9 understand, Your Honor, for copyright registrations, you  
11:39AM 10 can only register or claim registration or claim  
11 copyrighted material that you have created, not what  
12 third parties have created. That's why the third-party  
13 contributors identification for this kind of a case is  
14 important.

15           And it says there are programs with notices  
16 shown in Attachment B to the license. And it expressly  
17 mentions here a MOSY MIB compiler and ISODE package  
18 (indicating). I don't know how to exactly pronounce  
19 that, but let's just call it ISODE.

11:40AM 20           Attachment B talks not just about ISODE, It  
21 talks about a bunch of contributors; the MITRE  
22 Corporation, Northrop, NYSER.Net, Marshall T. Rose. We  
23 haven't seen any communications or documents related to  
24 these.

25           The next page talks about DES. We haven't seen

1 anything about DES. We have seen e-mails, a couple of  
2 e-mails, about ISODE data security.

3 ISODE seems to be something that they use as a  
4 third-party product or code. It's also on their website  
5 in the glossary. It's a little -- we'll try to zoom in  
6 so that it's easy on the eyes.

7 Their own website refers to ISODE. I have seen  
8 nothing in the production relating to communications  
9 with ISODE.

11:40AM

10 And another reason why we are not a hundred  
11 percent sure what's going on with identifying  
12 third-party communications or documents, Your Honor, is  
13 Interrogatory 15 that they just responded to which  
14 expressly asks for identification of third-party code  
15 and the source of the third-party code, and this is  
16 their response (indicating). It refers to the source  
17 code repository produced by SNMP Research in this  
18 litigation.

11:41AM

19 So there seems to be something going on with  
20 respect to their lack of identification of who are the  
21 third-party contributors, whether in the form of  
22 documents, whether in the form of interrogatories, and  
23 that's why we're not sure if the assertion that 11  
24 documents relating to third-party contributors when I  
25 just showed you at least five or six, ISODE and then the

1 list mentioned below.

2 We looked at one of the expert reports which  
3 talks about code that came from Marshall Rose. That's  
4 part of their product.

5 So, we're just -- like this reluctance to share  
6 information about third-party contributors, which is  
7 pretty key to our case, and certainly it matters on the  
8 scope of their copyrights. So we're not sure if we are  
9 getting the information that we need from them, either  
11:42AM 10 by the way of interrogatory responses because you just  
11 heard Mr. Wood say that the source code repository is  
12 all the code that they have been developing over the  
13 last 20, 30 years. And the rog response says, go look  
14 in the source code repository, when they should already  
15 know this information and how voluminous it is.

16 But this rog response, I won't harp on this  
17 because this is probably coming to you in a dispute this  
18 week. But there is certainly something missing on third  
19 parties. I don't know if -- why the lack of candor in  
11:43AM 20 terms of identifying third parties or identifying  
21 communications with third parties. But we don't think  
22 11 documents relating to two third parties completes the  
23 response to our RFP.

24 THE COURT: Okay.

25 MR. WOOD: Your Honor, in response to RFP 7, we

1 searched for any e-mails that are to or from any of  
2 these third-party entities. The SNM- --

3 THE COURT: The names that he showed?

4 MR. WOOD: Yes. And I think maybe  
5 even -- maybe even more. But, I mean, there is no lack  
6 of candor. He has a list of who they are. So it's not  
7 like SNMP Research is trying to hide it. They have the  
8 source code. They can search for the copyrights from  
9 all those entities and see who they are.

11:44AM 10 So we searched for anything having to do with  
11 the code and produced those documents. There is  
12 just -- we went through thousands of documents. There  
13 is hardly anything.

14 When you have open source software, there is no  
15 negotiation. So, open source software, they put the  
16 software out on the internet and you go get it and you  
17 use it. You don't --

18 THE COURT: And all of these were open source?

19 MR. WOOD: I don't know. I'd have to check  
11:44AM 20 with my client to be sure. I believe -- I believe  
21 that's the case. I'm not sure about the Marshall Rose  
22 one. But all the university ones and things like that,  
23 they're different tools and pieces of source code that  
24 would have been downloaded and used in the product.

25 But you don't -- there is no negotiation

1 process like there is with one of SNMP Research's  
2 clients where they contact you, here is the license, you  
3 pay us money, we send you an agreement. There is back  
4 and forth and there is negotiation. You just -- they  
5 have it out there; you go get it and you use it. So,  
6 sometimes you have to ask them a question, but that's  
7 pretty rare. You usually just use it.

8 So, I mean, there is no --

9 THE COURT: So, you're representing that the  
11:45AM 10 search has been done for the communications with all of  
11 the listed third-party contributors that he's at least  
12 shown the Court today?

13 MR. WOOD: Right. We searched the list. We'll  
14 be glad to share exactly what we searched with them. If  
15 they think we left someone out, we can search that  
16 person. But I wouldn't have expected to find a lot of  
17 documents because of just the way open source works.  
18 And we didn't. I was actually surprised we found any.  
19 But we did -- we did find some. There was some  
11:46AM 20 communication sometimes with an author about some  
21 things.

22 There is also -- there is one contractor who  
23 contributed to the SNMP Research software, and we have  
24 produced all of those documents. There is -- there are  
25 a lot more communications related to that contractor.

1 But we did produce all of those.

2 THE COURT: Okay. So you produced those, and  
3 you can check and confirm whether the ones shown today  
4 were all open source or not and you can share with  
5 Extreme the search that you performed?

6 MR. WOOD: Yes.

7 THE COURT: Okay.

8 MR. WOOD: Okay.

9 THE COURT: Mr. Prabhakar, it sounds like he's  
11:46AM 10 at least explained and responded. And, so, I ask that  
11 you have those discussions. Let him share the search  
12 with you, with the additional details he'll look into  
13 about whether or not they were open source. He says he  
14 did with the third-party contractor provide that  
15 information. So, if you can make sure you have that.  
16 Otherwise, it sounds like it's responded to. But you  
17 can put that in your status report that you all have had  
18 the discussion and checked all of that so the Court can  
19 be assured that that is complete.

11:47AM 20 MR. PRABHAKAR: Yes, Your Honor.

21 THE COURT: Okay. And you said RFP No. 10,  
22 which is the sixth discovery dispute, has been resolved?

23 MR. PRABHAKAR: Yeah, we're not asking for  
24 anything else.

25 THE COURT: Okay. All right. So that brings

1 us to our last matter, and this is for the deposition,  
2 Extreme's Rule 30(b)(6) deposition. And I've looked at  
3 Extreme's proposed dates. Did the one deposition occur  
4 yesterday that was on the schedule?

5 MR. PRABHAKAR: Yes, Your Honor.

6 THE COURT: Okay. So that's complete. So the  
7 next dates we have are Fitzgerald for April the 23rd,  
8 and then Hutchins, which we've discussed, the 7th.

9 Mr. Wood, I understand you have been waiting,  
10 and your position is you would like it to occur earlier,  
11 but the schedule seems appropriate with everything that  
12 needs to be done.

13 So is there anything else you wish to add for  
14 why it would need to occur any earlier than what's set  
15 forth?

16 MR. WOOD: Yes, Your Honor. So, a couple of  
17 items on scheduling. So, the deposition did occur  
18 yesterday, but on the -- on the 9th, the day before the  
19 deposition, so, two days ago, the day before the  
20 deposition occurred, we were informed that Mr. Ajmera  
21 would not be discussing Topic 25 and --

22 THE COURT: So he was designated for 17 and 25,  
23 and the day before you were told it would just be one  
24 topic?

25 MR. WOOD: Yes. And part of our problem with

1 this, and we don't know why we didn't find out until the  
2 day before when this was, you know, agreed upon much  
3 earlier, but also Mr. DeBacker on February 14th, in the  
4 December 29th, 2023 status report to the Court was  
5 scheduled for Topic 25 on February 14th, and  
6 Mr. DeBacker was not prepared during his deposition to  
7 discuss Topic 25. And, so, Extreme said, we'll get  
8 somebody else to do that.

9 And, so, we've now prepared -- we've had two  
11:50AM 10 different people prepared to take a deposition on Topic  
11 25, and we either showed up at the deposition and found  
12 out he wasn't prepared to talk about it, or the night  
13 before when we were already -- the deposition yesterday  
14 took place in Boston. So someone had to travel to  
15 Boston and we were already there.

16 THE COURT: Can you remind me what Topic 25 is?

17 MR. WOOD: So, this is their steps to collect  
18 documents and how their, you know, e-mail systems work.  
19 Like, it's all about their documents and how they  
11:50AM 20 gathered things and that type of thing.

21 THE COURT: Okay.

22 MR. WOOD: The -- we are also -- so, Topic 25  
23 has not been rescheduled, and we really need some sort  
24 of mechanism so we don't run into this problem where we  
25 just -- we show up and we've prepared and then we've got

1 to prepare again and then we've got to travel again.

2 And, so, we don't know if that's going to be  
3 another date. Is that going to be Mr. Fitzgerald? Is  
4 it going to be Mr. Hutchins?

5 We also have not scheduled Topic 9. So, there  
6 is two parts to Topic 9. One is the questions about  
7 their written discovery, and that is -- that's been  
8 briefed. That's been fully briefed and is now before  
9 Your Honor.

11:51AM 10 The other part of Topic 9, which is related to  
11 25, has to do with their collection of documents  
12 specifically for discovery. And we haven't -- they have  
13 agreed to put someone up for that part of Topic 9.  
14 Mr. DeBacker also was supposed to be up for that topic  
15 and was not prepared to discuss it. But we have  
16 not -- we have not gotten that scheduled either.

17 And, so, I mean, we can wait until the 7th for  
18 Mr. Hutchins. We're just -- we're trying to get through  
19 these, and we didn't under- -- you know, there was no  
11:52AM 20 discussion about why did he need to be a month out; why  
21 couldn't we do it earlier?

22 But probably the bigger deal is just  
23 getting -- making sure we get through all the -- all the  
24 topics. And then when they put up a witness and say  
25 they're putting up a witness for a topic that they

1 actually -- actually follow through because we're having  
2 to retake these depositions.

3 And part of the motion on Topic 9 is we would  
4 like some extra time, if Your Honor sees fit to reopen  
5 Topic 9, because we did spend time trying to question  
6 the witness on that, and we think we should get a little  
7 extra time there. But I think that's probably more  
8 appropriately handled in response to that -- to that  
9 motion. But it's related to all this -- to all this  
10 scheduling. So --

11:53AM

11 THE COURT: All right. Mr. Prabhakar, if you  
12 could address Topic 25 and what the plan is for that.

13 MR. PRABHAKAR: Yes, Your Honor. Let me  
14 address it in a couple of parts. So, Mr. DeBacker was  
15 prepared on Topic 25, and we thought he provided  
16 testimony as best he could. The problem with Topic 25,  
17 Your Honor, is: It's about efforts to collect documents  
18 responsive to discovery requests or to preserve  
19 documents related to this litigation.

11:53AM

20 As you can understand, in a case of this size,  
21 the bulk of that work is done by the lawyers in  
22 communication with the company's personnel, and all of  
23 that stuff is privileged. So -- or even if not all of  
24 that, at least our communications with them about  
25 document collection and information that they provide us

1 is privileged. It's a hard topic in a case of this  
2 complexity.

3 Mr. DeBacker was prepared as best he could.  
4 Mr. DeBacker was in a peculiar personal situation where  
5 he was coming back from his wife's surgery and just  
6 didn't have the amount of time that he could fully  
7 prepare on 25. And there were certain questions asked  
8 during the deposition which suggested that Extreme may  
9 have, you know, destroyed documents or done something of  
10 that sort, and which is what really got us worried about  
11 where plaintiffs are going with 25 because we are a  
12 hundred percent sure none of that has happened.

13 So, we -- we recognized the gravity of this  
14 topic, and, therefore, we tried to prepare Mr. Ajmera.  
15 And, again, this is not -- like, IT is not Mr. Ajmera's  
16 forte. We tried to prepare him, and we were not  
17 confident that he would be able to provide testimony  
18 which would not end up in front of Your Honor that  
19 somehow he was unprepared. It's a hard topic.

20 Topic 9 was another reason why we had to pull  
21 him back because we were not able to understand how 9 is  
22 different from 25. And we recognize that we had not  
23 designated him on 9. And we wanted to understand from  
24 plaintiffs, how are 9 and 25 different so that next  
25 person who is designated can be designated on both and

1 then we can call these topics done.

2 So that's why we had to pull Mr. Ajmera off at  
3 the last minute because we did not want to have three  
4 tries on the same topic. I understand that it could  
5 have been frustrating for plaintiffs. But I think it  
6 would have been more frustrating for them had they  
7 actually asked the questions, burned the time and then  
8 realized he was not prepared. So --

9 THE COURT: So, have you had the discussions on  
11:56AM 10 the scope of those topics so that you can find the  
11 appropriate person to designate?

12 MR. PRABHAKAR: The interplay between 9 and 25,  
13 we sent an e-mail to plaintiffs the day we pulled  
14 Mr. Ajmera back on this topic.

15 THE COURT: On the 9th.

16 MR. PRABHAKAR: On 9. Can you explain to us --  
17 the way we understand it, 9 and 25 seem to be, you know,  
18 the same scope, at least the agreed-upon part of 9,  
19 which was not in dispute before Your Honor. And if  
11:56AM 20 plaintiffs tell us, okay, they're the same scope,  
21 they're good, the next witness we can prepare for it.

22 And it's most likely going to be Mr. Fitzgerald  
23 and it's not going to be Mr. Hutchins. But, again, some  
24 of this kind of gets resolved as we get into the depo  
25 prep mode and see if the witness can gather enough

1 information within the company to be prepared about  
2 this.

3 So we expect 9 and 25 to be addressed together,  
4 most likely with Mr. Fitzgerald. But, really, the  
5 expectation here was that we did not want to put up  
6 another witness that plaintiffs then would say was  
7 unprepared.

8 And I don't know if, like, the delta is like --  
9 it seems like now plaintiffs are over-prepared in terms  
11:57AM 10 of having done their work twice. But, really, I  
11 think --

12 THE COURT: I think it's more in terms of  
13 scheduling.

14 MR. PRABHAKAR: Yes, Your Honor.

15 THE COURT: If there is going to be a person  
16 outside of Fitzgerald or Hutchins, where is that going  
17 to be worked in?

18 MR. PRABHAKAR: I don't expect this to be a  
19 person outside of Mr. Fitzgerald or Mr. Hutchins, Your  
11:57AM 20 Honor, because, frankly, this is a topic that it's  
21 virtually hard to find any single person in Extreme who  
22 actually, as a part of their job, knows everything that  
23 was done in the context of discovery. Because there are  
24 repositories that engineering knows about, there are  
25 repositories that marketing knows about, that finance

1 knows about. There is not a single IT person that knows  
2 about all of them. And then there are efforts to  
3 collect documents, a large part which tends to be  
4 privileged. But we also wanted to be forthcoming in  
5 terms of what we did because we didn't want any, you  
6 know, blemish on our document collection and production  
7 efforts.

8 So, it's a hard topic to prepare a witness on,  
9 and -- but we will not push this beyond Mr. Fitzgerald  
10 or Mr. Hutchins. And I'm almost more than 50 percent  
11 sure it's going to be Mr. Fitzgerald because his  
12 function at least sits in the organization at a place  
13 where he has insights into multiple teams and he's more  
14 likely than not to be able to get this information.

15 So it was done out of an abundance of caution  
16 that we didn't want to waste plaintiffs' time again, but  
17 not meant to, like, surprise them in any way.

18 THE COURT: Okay. All right. Well, with that,  
19 Mr. Wood, it sounds like topics No. 9, the second  
20 subpart, and 25 will not -- will likely be  
21 Mr. Fitzgerald. So that would fit in to the schedule  
22 that's proposed. So the Court's inclined to go with  
23 this schedule at this point.

24 MR. WOOD: Okay. Could we update the Court on  
25 Extreme's agreement for 9 and 25 with Mr. Fitzgerald and

1 when those dates --

2 THE COURT: Yes. Have you responded to his  
3 e-mail of the 9th asking for clarification on 9 and 25?

4 MR. WOOD: I believe we did.

5 MR. PRABHAKAR: I don't see that, Your Honor,  
6 but I think if Mr. Wood can represent right now that 9  
7 and 25 are coterminous, I think that will just  
8 short-circuit us going back and forth on this.

9 MR. WOOD: Yeah, I think we said they overlap,  
10 and we were fine to have one witness cover both. It  
11 wasn't a problem. So that's what we said on the 9th.

12 THE COURT: Okay. Well, let's just then go  
13 with this schedule and with the anticipation that it  
14 will be Mr. Fitzgerald on the remaining part of 9 and  
15 for 25.

16 Okay. So, that's all I had on the list today.  
17 You all have a lot to do. So, is there anything else we  
18 need to take up at this time, Mr. Prabhakar?

19 MR. PRABHAKAR: Couple of things, Your Honor.

20 THE COURT: Okay. That's fine.

21 MR. PRABHAKAR: Hopefully it will not take a  
22 lot of time.

23 Just based on the meet and confers that we're  
24 having and we're supposed to have, we anticipate there  
25 might be additional disputes. I think what Your Honor

1 did last time in February with setting this date --

2 THE COURT: Let's be more positive.

3 MR. PRABHAKAR: I wish, Your Honor. But we  
4 already have two disputes that are at an impasse.

5 But I think what Your Honor did in February,  
6 which was proactively set a date that the parties could  
7 then work together, we would appreciate if we could have  
8 a tentative date set for the next hearing. And if it  
9 turns out that, you know, both parties for a change get  
10 along and have everything, we can inform the Court and  
11 then we could make it that date. But I thought what we  
12 did last time was very, very helpful for both parties,  
13 in terms of teeing up the issues before the Court.

14 THE COURT: Mr. Wood.

15 MR. WOOD: So an important issue for us is the  
16 reopening of Topic 9 --

17 THE COURT: 9, uh-huh.

18 MR. WOOD: -- which we think Mr. DeBacker  
19 certainly was not prepared on the written discovery.

12:01PM 20 And Extreme's arguing the scope didn't cover that. And  
21 that's been briefed before you, but our -- what we're  
22 trying to do is: We want to question a 30(b)(6) witness  
23 on the facts in their interrogatory responses. And, so,  
24 right now we're being prohibited from doing that because  
25 that's an open issue. And if we go forward with

1 Mr. Fitzgerald, he's covering all the rest of these  
2 topics. It -- it's going to be -- it's going to cause  
3 us a problem because we'll want to ask him about the  
4 facts. They will say that's out of scope because it's a  
5 fact in an interrogatory. And then they're going to  
6 say, well, but yet it was already covered, which is  
7 really their argument, even though he wasn't up for  
8 that; he wasn't up for the facts in the interrogatories.

9 So, if we are going to have a hearing and Your  
10 Honor thinks a hearing is necessary to resolve the  
11 briefing on Topic 9, we would like to do it sooner  
12 rather than later so that maybe we could get that  
13 resolved before Mr. Fitzgerald's deposition.

14 THE COURT: Okay.

15 MR. PRABHAKAR: Your Honor, I don't want to  
16 comment on Topic 9 which has been fully briefed before  
17 the Court. I don't want to argue that motion.

18 THE COURT: You said you have another issue,  
19 though.

12:02PM 20 MR. PRABHAKAR: Yes, I do. And it's -- as Your  
21 Honor probably has figured out, it's my favorite issue,  
22 which is the prior litigation materials.

23 THE COURT: Uh-huh.

24 MR. PRABHAKAR: And we are going to meet and  
25 confer with plaintiffs. What I'm hoping is for us to

1 get some guidance from the Court so that this is not an  
2 open-ended process. These are really critical  
3 documents.

4 We have consent from Avaya. I have talked to  
5 counsel for Nortel. He is waiting to get the  
6 notification for production of the documents. And he  
7 has represented to me that once they get the  
8 notification, Nortel would promptly respond, noting that  
9 they are not going to intervene or prevent the  
10 production of these documents. But where we are stuck  
11 right now is, they haven't received notice for the  
12 production of these documents.

13 The prior litigation materials, even though  
14 they seem numerous, right now, we think the scope of our  
15 request has collapsed into two unique categories or  
16 three unique categories; expert reports, deposition  
17 transcripts of plaintiffs' fact witnesses, and  
18 deposition transcripts of the expert reports that are  
19 requested. So we could actually put the deposition  
20 transcripts for experts in the same bucket as expert  
21 materials. And then the third material is sealed court  
22 filings.

23 Based on the lists --

24 THE COURT: I'm sorry; what was the last one?

25 MR. PRABHAKAR: Oh, sealed court filings, Your

1 Honor.

2 THE COURT: Okay.

3 MR. PRABHAKAR: So, the problem right now is  
4 information asymmetry, both for the Court and for us,  
5 because Your Honor ordered plaintiffs to produce the  
6 list, which, I think, would have been a really helpful  
7 exercise in getting this to resolution. But we sent the  
8 list to the Court. I'm happy to put it up again. But  
9 the list just does not have the information,  
10 substantively, at least, on the Avaya side to help us  
11 make a decision on what is not relevant.

12 So, what we are hoping, Your Honor, and this is  
13 just a proposal to see if we can get this issue  
14 resolved, is that based on the lists that the Court  
15 ordered plaintiffs to produce and then we identified  
16 what was wrong with those lists and plaintiffs had a  
17 second chance to supplement those lists. So I think  
18 that the universe of lists should be considered done.  
19 And now we have identified materials to the plaintiffs  
20 based on the contents of these lists that we think are  
21 relevant to this case and are important for us to have.

22 In the meet and confer process, Your Honor,  
23 what we would like is that plaintiffs now tell us which  
24 expert reports or which of their fact witness  
25 transcripts are irrelevant. Once we have that

1 information, we may agree with part of that, we may  
2 disagree with part of that, and we will provide them our  
3 reasons. And then whatever is in dispute either the  
4 Court hears why plaintiffs think it's irrelevant, why we  
5 think it is relevant.

6 But then once that process is done, hopefully  
7 we come up with a list that both sides agree that, okay,  
8 we'll drop these expert reports; they seem totally  
9 unimportant, you know, irrelevant. But at least we have  
10 a firm date when the Court can weigh in on specific  
11 documents or specific expert reports or transcripts and  
12 not have us meet and confer document by document  
13 because, really, it's the expert reports. If the expert  
14 report is relevant, all the associated exhibits are  
15 relevant and the expert's transcripts are relevant. If  
16 the expert report is irrelevant, it's not like we're  
17 going to ask, this exhibit seems interesting, let's have  
18 that.

19 So, we're just hoping to put together an order  
20 process so that plaintiffs don't think we're wasting  
21 their time meeting and conferring. We don't feel that  
22 plaintiffs are trying to run out the clock on giving  
23 notice, and we can just, like, litigate this case fairly  
24 and without us -- you know, the parties getting into  
25 each other's motives and just focusing on the substance.

1           So, that's my request, Your Honor. But if the  
2 Court has any other directions, I'm happy to take that  
3 as well. But that's what I thought would be a fair way  
4 to get this issue resolved and off your plate,  
5 hopefully, or in your plate in a narrowly-focused manner  
6 because right now the lists just don't do justice in  
7 terms of us being able to make an assessment of what we  
8 should drop.

9           THE COURT: Okay. Mr. Wood.

12:07PM 10           MR. WOOD: So, Your Honor, last Friday, as we  
11 told the Court, we started producing documents we  
12 have from the Avaya materials, and we've produced some  
13 expert reports, and whatever we -- if we produced an  
14 expert report, we also produced their deposition  
15 transcript and we produced the exhibits. So we weren't  
16 picking and choosing. And we did the whole -- the whole  
17 set.

18           And then we also -- two days ago, we did  
19 another production and produced the individual  
12:08PM 20 transcripts, deposition transcripts and all the exhibits  
21 for those transcripts. So -- and these are out of the  
22 set that they have requested.

23           We have been trying to have a conversation with  
24 them about what's relevant and what's not, and we think  
25 a lot of the experts probably aren't relevant.

1           THE COURT: And the Court had asked the parties  
2 to meet and confer on this.

3           MR. WOOD: Yes. And, so, when we -- their  
4 response to us has simply been we want everything we  
5 asked for. So if they're now saying we really want to  
6 have a discussion on relevance, we would -- we would  
7 welcome that. We would be glad to sit down and go  
8 through.

9           We're going to -- we've also now received a  
12:09PM 10 response from Nortel Canada, and they have agreed that  
11 we can produce documents, the documents that they  
12 submitted to the litigation, which I think should clear  
13 up a lot of the Nortel issues. We haven't started that  
14 process yet. We just got that this -- just a couple of  
15 days ago. So -- but, yes, we'd be glad to sit down and  
16 go through it with them because we don't -- we think a  
17 lot of the things they're asking for aren't relevant.

18           I think we do have an issue. Last time  
19 Mr. Prabhakar said they're not interested in source  
12:10PM 20 code, and it would -- the source code reports are pretty  
21 big in all these, and, so, to look at them and review  
22 them is a burden. And if they don't need that, and I  
23 think what he said is, well, I didn't really -- I was  
24 saying that if there wasn't permission. But our  
25 understanding of that, that wasn't really necessary. So

1 we -- that would be a big help for us if we can leave  
2 that -- those source code reports out for someone else's  
3 source code. So -- I mean, it was SNMP Research source  
4 code in someone else's product is what they're related  
5 to.

6 So, we're happy to sit down and go through the  
7 remaining stuff and produce, but we've already -- we've  
8 already started the process. We just haven't gotten any  
9 agreement. So we've just picked what we thought was  
10 relevant and then we'll have to discuss the rest.

12:11PM

11 THE COURT: Okay. Well, it sounds like there  
12 does need to be some more discussions on this to try to  
13 narrow whatever issues there may be with regard to this  
14 production. So continue that and have that discussion;  
15 the relevancy as well.

16 MR. WOOD: Okay.

17 MR. PRABHAKAR: Yes, Your Honor. And, really,  
18 the question, Your Honor, is the information asymmetry.  
19 So, if it was clear from the list what the report

12:11PM

20 relates to, it would have made life much easier in terms  
21 of dropping our demands.

22 On the source code side, Your Honor, I don't  
23 want to rehash what I said at the last hearing because  
24 the transcript speaks for itself, but I have talked to  
25 Avaya's in-house counsel, I have talked to Nortel's

1 outside counsel, and both of them have told me about  
2 source code that those expert reports, the majority of  
3 the source code in those expert reports was SNMP  
4 Research's source code that also relates to the  
5 registered copyrights because it's the same copyrights  
6 that were at issue in both cases.

7 And I can -- based on the source code expert  
8 report that even we have received, it bears out that  
9 their source code expert has been focused on SNMP  
10 Research source code in our products. There isn't  
11 free-ranging discussion of source code of our products  
12 that has nothing to do with SNMP Research or that  
13 Extreme independently developed.

14 So, if it's their source code, then that's  
15 really relevant to this litigation because it's the same  
16 registration. So I wanted to give Your Honor some  
17 comfort that it's not that I'm changing my position in a  
18 way that I'm asking for something that I had given up  
19 before because the last time the concern was that we're  
20 not asking for production of third-party source code.  
21 But, in this case, it even looks like the third parties  
22 are not concerned about production of their source code  
23 since it's so dated, particularly the Nortel stuff.

24 THE COURT: So how -- but you have -- but  
25 Mr. Wood is getting that. I'm trying to figure out the

1 avenue for getting this information. Are you asking  
2 Mr. Wood to get it?

3 MR. PRABHAKAR: He is the only person who has  
4 it, Your Honor, at this point in time because we just  
5 have a list, and the list which we sent to the Court  
6 just reads like -- you know, for example, I'll just put  
7 it up so that --

8 THE COURT: I understand. But you said you've  
9 talked with their counsel. They're okay with that?

12:13PM 10 MR. PRABHAKAR: Yeah. And I told them -- and,  
11 in fact, Avaya's counsel sent an e-mail to them saying  
12 everything that was in their list, including source  
13 code, we're okay with that.

14 THE COURT: Okay. Is there any problem then  
15 from your standpoint, Mr. Wood, if their counsel has  
16 said it's fine?

17 MR. WOOD: No, we can produce it. I think it  
18 still just goes back to the relevance and burden  
19 question.

12:14PM 20 THE COURT: How much of a burden is it if you  
21 already have it?

22 MR. WOOD: Well, they're still going through  
23 it. I mean, to produce -- it was probably -- each  
24 production that we made in the Avaya stuff was a day to  
25 go through the documents. We did find some privileged

1 materials in there because they were our files that we  
2 had. So there were some other things in there. So, I  
3 mean, we have to go through the documents. It's not  
4 like we just have it and we just give it to them. I  
5 mean, we need to go through it and actually do the  
6 production process.

7 So -- and the source code reports are pretty  
8 big and they have a lot of extra files. So they would  
9 be some of the more burdensome ones to produce. And if  
10 they're not important to the litigation, I think  
11 Mr. Prabhakar last time was willing to say, I don't need  
12 that; I just want the other stuff. So, if that's the  
13 least important, then we would not do it because of the  
14 burden because we've got a lot of other things to do.

15 MR. PRABHAKAR: We're fine with production in  
16 PDF format instead of going through the whole process  
17 where they would convert it to an image or whatever.  
18 Produce them in PDF if that reduces the burden because  
19 of the size of the document.

12:15PM 20 MR. WOOD: It's not the physical production  
21 process; it's the reviewing of the documents, making  
22 sure we've looked at it and we know what's in there,  
23 there is not something else in there, there is not some  
24 attorney notes or something like that.

25 THE COURT: And you said you found some

1 privileged material in looking through some?

2 MR. WOOD: Yes.

3 MR. PRABHAKAR: I mean, if -- that may be  
4 related to the way they have organized their documents.  
5 But I don't understand how a report that's been  
6 submitted in a case would have privileged information  
7 unless --

8 MR. WOOD: Well, because it was in our files.

9 THE COURT: Don't talk over each other. We  
10 have a court reporter.

12:15PM

11 So, I would have the same questions because I  
12 don't have the full understanding of that. So you all  
13 need to discuss this further. Share your conversations  
14 that you've had with counsel with Mr. Wood and let  
15 Mr. Wood explain to you, like, what he would have to go  
16 through. You can have the relevancy discussions and  
17 then see where you get --

18 MR. PRABHAKAR: Yes, Your Honor.

19 THE COURT: -- with that.

12:16PM

20 MR. LEE: Your Honor, on the relevancy  
21 discussions, I mean, I've participated in already one  
22 meet and confer on this, and the problem -- and  
23 Mr. Prabhakar is very smart, smarter than I am, about  
24 the asymmetrical aspect of the information that's  
25 available. And what I mean -- or what I understand that

1 to be is: We get on a meet-and-confer call and we go  
2 through this list, and they say, explain to us how this  
3 is relevant, and we're looking at this list. I can't  
4 tell what it is. It's very hard for us to explain the  
5 relevance because we're looking in the dark here. And  
6 that's why we're asking, look, you guys are looking at  
7 this; tell us what you think is clearly irrelevant here  
8 and why and then we will narrow down the universe in  
9 which we can do this. But this back and forth, you tell  
10 me why it's relevant; I can't; you tell me why you think  
11 it's irrelevant, we're just talking loops around each  
12 other.

13 THE COURT: And, well, what I heard today  
14 Mr. Wood say is you haven't had that discussion yet.

15 MR. PRABHAKAR: Actually, Your Honor, we did,  
16 and I think it's in the report that we submitted to the  
17 Court where we just asked them, why don't you tell us  
18 what you're producing and then that limits the universe  
19 of what we have to discuss, and they wouldn't give us  
20 that list.

21 They have produced some documents, but I don't  
22 know if the production's complete, so that it would be  
23 helpful to actually meet and confer about stuff that  
24 they think they don't want to produce because of burden  
25 or irrelevance. And that's the information that's been

1     lacking from our end because we identified what we  
2     thought was relevant based on the list that was provided  
3     based on some additional research that we did in those  
4     dockets.

5             So, really, I think we've kind of done our  
6     diligence. But I understand we need to discuss with  
7     Mr. Wood. But what Mr. Lee said was really that we  
8     can't set forth any more on relevance than we already  
9     have, and we need information from them and we need  
12:18PM 10    cooperation from them so that if we ask them, okay,  
11    which ones are you now producing and the next time  
12    you're producing any so we don't waste time discussing  
13    that.

14            THE COURT: Can you all meet in person on that  
15    and go through the sheet?

16            MR. WOOD: Yes, we'll be glad to talk to them  
17    about what we think is relevant and not relevant, Your  
18    Honor, and then --

19            THE COURT: Okay. And I think you all need to  
12:18PM 20    do that in person and not over the phone.

21            MR. WOOD: Okay.

22            THE COURT: Okay. Let me take just a  
23    five-minute recess and make sure there is not anything  
24    else I need to address with the parties. So, I'll be  
25    right back. We'll stand in a brief recess.

1 THE COURTROOM DEPUTY: All rise. This  
2 honorable court stands in recess.

3 (A brief recess was taken.)

4 THE COURTROOM DEPUTY: Please be seated. This  
5 court is again in session. Please come to order.

6 THE COURT: So, the only thing that I wanted to  
7 advise the parties with, I guess, a potential discovery  
8 dispute that may be forthcoming that Mr. Prabhakar  
9 mentioned, include that, the status of your discussions  
10 on that in that report that the Court is to receive next  
11 Wednesday. I'll look at that. And then if it's  
12 necessary to get the parties together, I'll  
13 have -- we'll reach out to you at that time to schedule  
14 a date for that. Because Mr. Prabhakar was asking for a  
15 date, but given some stuff I have on my calendar, I'll  
16 just -- I'll need to reach out to you just to schedule  
17 that once I know what I'm dealing with or need to  
18 address.

19 MR. PRABHAKAR: Yes, Your Honor. And I  
12:29PM 20 appreciate Your Honor's -- the willingness to indulge my  
21 requests a lot, but I also know from both your calendar  
22 and Mr. Lee how much you have on your plate. I just  
23 want you to know I know that and I acknowledge that. So  
24 I'm very grateful for what we get from you.

25 THE COURT: And I'm happy to try to resolve

1 these. So I'll see what we're dealing with next week  
2 and where we're at.

3 Okay. So, thank you all for coming in today.  
4 I hope you all have some fruitful discussions this  
5 afternoon so you can start getting your case ready to be  
6 tried. All right. Thank you.

7 MR. WOOD: Thank you, Your Honor.

8 MR. PRABHAKAR: Thank you, Your Honor.

9 THE COURTROOM DEPUTY: All rise. This  
10 honorable court is adjourned.

12:30PM

11 (Which were all the proceedings had and  
12 herein transcribed.)

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1 C-E-R-T-I-F-I-C-A-T-E

2 STATE OF TENNESSEE

3 COUNTY OF KNOX

4 I, Teresa S. Grandchamp, RMR, CRR, do hereby  
5 certify that I reported in machine shorthand the above  
6 proceedings; that the foregoing pages were transcribed  
7 under my personal supervision and constitute a true and  
8 accurate record of the proceedings.

9 I further certify that I am not an attorney or  
10 counsel of any of the parties, nor an employee or  
11 relative of any attorney or counsel connected with the  
12 action, nor financially interested in the action.

13 Transcript completed and signed on Monday,  
14 April 14, 2024.

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TERESA S. GRANDCHAMP, RMR, CRR  
Official Court Reporter

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